

United States Government

NATIONAL LABOR RELATIONS BOARD

Region 11

P. O. Box 11467

Winston-Salem, NC 27116-1467

Telephone: 336/631-5201

Fax: 336/631-5210

www.nlr.gov

4035 University Pkwy., Suite 200

Winston-Salem, NC 27106-3325

February 9, 2005

Re: End to End
Case No. 11-RD-652

Ms. Arthuree Fowler
4321 Holmes Avenue
North Charleston, SC 29405

Dear Ms. Fowler:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

As a result of the investigation, it appears that further proceedings on the petition are not warranted. The petition was filed on October 2, 2003. By letter dated October 3, 2003, you were informed that the processing of the petition was being held in abeyance pending the disposition of several unfair labor practice charges, including Case No. 11-CA-19877, which was filed on March 6, 2003. That charge alleged, inter alia, that the Employer refused to recognize and bargain with International Union of Operating Engineers, Local 465, AFL-CIO for an initial contract, conduct which predated the showing of interest and the filing of the petition in this matter. Thereafter, on October 30, 2003 the Regional Director approved a Settlement Agreement in Case No. 11-CA-19877 in which the Employer agreed, among other things, to recognize and bargain with the Union. Although that case has not been closed due to claims of non-compliance in other areas, the Employer did recognize and bargain with the Union and the parties executed a collective bargaining agreement that became effective October 1, 2004.

In Douglas-Randall, Inc., 320 NLRB 431 (1995), the Board ruled that an Employer's agreement to settle outstanding unfair labor practice charges and complaints by recognizing and bargaining with a union required final dismissal, without provision for reinstatement, of a decertification petition filed subsequent to the onset of the alleged unlawful conduct. The Board reasoned that in order to have meaning, such a settlement agreement must permit bargaining to take place for a reasonable period of time without challenge to the Union's representative status. Moreover, it further reasoned that allowing reinstatement of a decertification petition would compromise this bargaining, deprive the Union of the resolution for which it settled and relieve the Employer of much of the substantive obligation to which it in turn agreed. *Id.* at 434. Because your petition challenging the Union's majority status was filed subsequent to the onset of the Employer's alleged unlawful conduct but prior to the settlement agreement resolving the charges, I am dismissing the petition in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, you may obtain a review of this action by filing a request therefor with the National Labor Relations Board, addressed to the Executive Secretary, National Labor Relations Board, Washington, D.C., 20570. A copy of such request for review must be served on the Regional Director and each of the other parties to the proceeding. This request for review must contain a complete statement setting forth the facts and reasons upon which it is based. The request for review (*eight copies*) must be received by the Executive Secretary of the Board in Washington, D.C., by the

close of business at 5:00 p.m. EST (EDT) on **February 23, 2005**. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. The request for extension of time should be submitted to the Executive Secretary of the Board in Washington, D.C., and a copy of any such request for extension of time should be submitted to the Regional Director, and to each of the other parties to this proceeding.

The request for review and any request for extension of time for filing must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding, and the copy must be served in the same or faster manner as that utilized in filing the request with the Board. When filing with the Board is accomplished by personal service, however, the other parties shall be promptly notified of such action by telephone, followed by service of a copy by mail or telegraph.

Very truly yours,

Howard D. Neidig, Jr.
Acting Regional Director

AGS/ags

cc:

End to End
Mr. Royce Anderson, Executive Vice President
415 Port Centre Pkwy, Suite 102
Portsmouth, VA 29405

Dean T. Buckius, Esq.
Vandeventer Black, L.L.P.
500 World Trade Center
Norfolk, VA 23510

International Union of Operating Engineers
1125 17th Street, NW
Washington, DC 20036